

December 20, 2011

Postal Regulatory Commission
901 New York Avenue N.W., Ste 200
Washington DC 20268-0001

re: Closure of Alplaus Community Post Office
Contract No. 089480-02-Z-0155
Docket No. A2012-88

Dear Sirs/Mesdames:

The United States Postal Service has filed a Motion to Dismiss our Appeal of the USPS decision to close the Alplaus Community Post Office as set forth in a Petition dated November 21, 2011, which Petition is on file with the Commission. Please consider this our Motion in Opposition to the USPS Motion to Dismiss.

The USPS Motion to Dismiss is based on the assumption that 39 U.S.C. Section 404(d)(1), which states that:

The Postal Service, prior to making a determination under Sub-section (a)(3) of this section as to the necessity for the closing or consolidation of **any post office**, (emphasis added) shall provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation to persons served by such post office to insure that such persons will have an opportunity to present their views.

does not apply to the USPS attempt to close the Alplaus Community Post Office.

It is our position that, as stated by the Commission in the Opinion entitled In the Matter of: Knob Fork, West Virginia 26579 (Donald R. Rankin, Petitioner) Docket Number A83-30, rendered on January 18, 1984, that the statutory term "Post Office", then used in Section 404(b), and now used in Section 404(d), does include a community contract post office for the reasons so well-articulated by the Commission in the Knob Fork Decision.

Alplaus, New York is a distinct community in every sense of the word and the Alplaus Community Post Office is a large part of that community, along with the Volunteer Fire Department, the Alplaus Methodist Church and a small bakery and coffee shop called "Samuels".

The Alplaus Community Post Office has been in operation, serving the 200 or so families in the Alplaus Community, with brief periods of inactivity, for more than 120 years. It has been in continuous operation for almost 90 years and serves as a meeting place and hub of communication of vital community information. Many of our older residents are able to walk to the Alplaus Community Post Office and far prefer to do so rather than to drive to any other postal facility across busy highways.

As stated in the Knob Fork decision, “The importance of the roll Post Offices can play in the life of a community was emphasized during the debates on the 1976 Amendment” to Section 400 of the United States Code, which amendments provided the orderly and effective procedure for the closing or consolidation of any Post Office.

The USPS, in its Motion to Dismiss, makes the same arguments it made in 1984, in the Knob Fork case, without distinguishing the facts or circumstances of this case. As was stated in that case, the purpose of amending the United States Code in 1976, to add the procedure for closing or consolidating any post office was, according to then Senator Randolph, to “establish a very simply mechanism to insure the opportunity for patrons to participate in the decision making to close or consolidate community post offices.” 122 Cong. Rec. 14268.

The USPS argues, in its motion, that the term “Post Office” does not include contract, or Community Post Offices. As was stated in that Opinion, however, “. . . in the public’s perception, the two types of facilities (post offices and community post offices - contract postal units) function in exactly the same manner.”

USPS also argues, in its motion, that to allow an appeal of a decision by USPS to close a contract postal unit would interfere with its managerial freedom. We agree with the Commission’s determination, in the Knob Fork case, however, in which it stated: “it follows that interpreting “post office” in its non-technical sense promotes one main policy of the statute (responsiveness) without doing violence to other (managerial freedom).”

We also disagree with the specific USPS position, as did the Commission in the Knob Fork decision, that the Commission lacks jurisdiction to consider our appeal of the decision to terminate the Alplaus Community Post Office contract because the procedures imposed by 39 U.S.C. Section 404(d) are not compatible with requirements of contract management, negotiation, and implementation.

Surely the USPS has been aware, as has the United Postal Workers Union, of the Commission’s decision in the Knob Fork case, decided in January 18, 1984, and of the possibility that the Commission would overturn a decision to terminate the contract of a community post office. The only justification given by USPS is that the closure was agreed to as part of a collective bargaining agreement. The argument by USPS that requiring the notice and analysis provided for in Section 404(d) would give a CPO operator some form of advantage over USPS is ludicrous as all that Section 404(d) requires is that USPS consider the effect of such closure, give proper notice to those affected by the closure and that it not act arbitrarily, capriciously or abuse its discretion or otherwise act not in accordance with law. These are the same requirements Congress imposes on USPS, and therefore on the UPW as well, in closing any other post office.

The statute also requires, of course, that the decision to close or consolidate a post office be supported by substantial evidence on the record. USPS has presented no evidence whatsoever to support the decision to close the Alplaus Community Post Office. In fact, it has admittedly disregarded the fact that our post office generates a profit for USPS of approximately \$40,000.00 per year and that much of that profit would be lost as a result of the closure due to fewer box rentals and increased costs for additional rural delivery.

Neither has USPS followed any of the notice procedures required by U.S.C. Section 404(d) in its decision to close the Alplaus Community Post Office.

The Petition in Opposition to the closure, submitted previously, was signed by approximately 80 Alplaus residents and postal customers. Another Petition, which was recently sent to our federal and state elected officials, expressed the frustration and disappointment of more than 200 customers of the Alplaus Community Post Office with the decision of closure. These Petitions are more than adequate evidence that the community does not want the Alplaus Community Post Office to be closed and that we feel strongly that our post office should be allowed to continue to serve the residents of Alplaus as it has for more than 120 years.

In conclusion, we respectfully request that the United States Postal Service's Motion to Dismiss be denied and that the determination to close the Alplaus Community Post Office be set aside as having been made without observance of the procedures required by law.

Thank you.

Andy Gilpin, President
Alplaus Residents Association